

RACING AND GAMING COMMISSION[491]

Notice of Intended Action

**Proposing rule making related to gambling games
and providing an opportunity for public comment**

The Racing and Gaming Commission hereby proposes to amend Chapter 1, “Organization and Operation,” Chapter 5, “Track, Gambling Structure, and Excursion Gambling Boat Licensees’ Responsibilities,” Chapter 6, “Occupational and Vendor Licensing,” and Chapter 8, “Pari-Mutuel Wagering, Simulcasting and Advance Deposit Wagering,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 99D.7, 99E.3 and 99F.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 99D, 99E and 99F; 2020 Iowa Acts, House File 2389; and 2022 Iowa Acts, House Files 803 and 2497.

Purpose and Summary

- Item 1 implements changes required by 2022 Iowa Acts, House File 2497.
- Item 2 implements changes required by 2020 Iowa Acts, House File 2389.
- Item 3 implements changes required by 2022 Iowa Acts, House File 2497.
- Item 4 implements changes required by 2022 Iowa Acts, House File 2497.
- Item 5 implements changes required by 2022 Iowa Acts, House File 803.
- Item 6 implements changes required by 2022 Iowa Acts, House File 2497.
- Item 7 implements changes required by 2022 Iowa Acts, House File 803.
- Item 8 implements changes required by 2022 Iowa Acts, House File 803.
- Item 9 implements changes required by 2022 Iowa Acts, House File 2497.
- Item 10 implements changes required by 2022 Iowa Acts, House File 2497.
- Item 11 implements changes required by 2022 Iowa Acts, House File 2497.
- Item 12 implements changes required by 2022 Iowa Acts, House File 2497.
- Item 13 implements changes required by 2022 Iowa Acts, House File 2497.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Commission no later than 4:30 p.m. on October 11, 2022. Comments should be directed to:

Barb Blake
Iowa Racing and Gaming Commission
1300 Des Moines Street
Des Moines, Iowa 50309
Email: barb.blake@iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

October 11, 2022
9 a.m.

Commission Office, Suite 100
1300 Des Moines Street
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Commission and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Adopt the following **new** subrule 1.5(14):

1.5(14) *Alternative simulcast license application.* This form shall contain, at a minimum, the full name of the applicant, all ownership interests, balance sheets and profit-and-loss statements for three fiscal years immediately preceding the application, pending legal action, agreement with licensed facility or description of proposed operation, and a notarized certification of truthfulness. The form may include other information the commission deems necessary to make a decision on the license application.

ITEM 2. Rescind and reserve subrule **1.8(21)**.

ITEM 3. Amend subrule 5.4(16) as follows:

5.4(16) *Officers, agents, and employees.* Licensees are accountable for the conduct of their officers, agents, and employees. The commission or commission representative reserves the right to impose penalties against the license holder or its officer, agent, employee, or both as the commission or commission representative determines appropriate. In addition, the licensee shall be responsible for the conduct of nonlicensed employees and other persons working on behalf of the licensee in public and nonpublic areas of the excursion gambling boat, gambling structure, or racetrack enclosure.

ITEM 4. Amend subrule 6.2(1) as follows:

6.2(1) All licensees for internet fantasy sports contests and all persons participating in any capacity at a racing or gaming facility, Licensee staff engaged in administration, control, conduct of gambling games, racing and sports wagering and fantasy sports contest board members, with the exception of certified

law enforcement officers while they are working for the facility as uniformed officers, are required to be properly licensed by the commission.

a. to j. No change.

k. Any licensee who allows another person use of the licensee's license badge for the purpose of transferring any of the benefits conferred by the license may be fined, have the license suspended or revoked, or be subject to any combination of the above-mentioned sanctions. No license shall be transferable and no duplicate licenses shall be issued except upon submission of an application form and payment of the license fee.

l. No change.

m. Non-U.S. citizens must supply documentation authorizing them to work in the United States or supply documentation demonstrating compliance with the North American Free Trade Agreement.

n. to p. No change.

ITEM 5. Amend paragraph 6.5(1)“f” as follows:

f. A license shall be denied if the applicant has an addiction to alcohol or a controlled substance without sufficient evidence of rehabilitation, has a history of mental illness without demonstrating successful treatment by a licensed medical physician or physician assistant, or has a history of repeated acts of violence without sufficient evidence of rehabilitation.

ITEM 6. Amend subrule 6.14(3) as follows:

6.14(3) ~~Any employee who works for a licensed vendor and will be supplying the goods or services to the facility must have a vendor employee license.~~ Only employees who work for a racing, sports wagering, or simulcast vendor require an occupational license. A vendor license must be issued before a vendor employee can be issued a license to represent that company. The authorized signature on the vendor employee's application must be the signature of the person authorized by the vendor application to sign vendor employee applications.

ITEM 7. Amend paragraph 6.24(1)“b” as follows:

b. A jockey shall pass a physical examination given within the previous 12 months by a licensed physician or physician assistant affirming fitness to participate as a jockey. The commission representatives may require that any jockey be reexamined and may refuse to allow any jockey to ride pending completion of such examination.

ITEM 8. Amend subrule 6.28(2) as follows:

6.28(2) *Drug prohibition/body fluid test.* Licensees whose duties require them to be in a restricted area, as defined in subrule 6.28(1), of a racing facility shall not have present within their systems any controlled substance as listed in Schedules I to V of U.S.C. Title 21 (Food and Drug Section 812), Iowa Code chapter 124 or any prescription drug unless it was obtained directly or pursuant to valid prescription or order from a duly licensed physician or physician assistant who is acting in the course of professional practice. Acting with reasonable cause, a commission representative may direct the above licensees to deliver a specimen of urine or subject themselves to the taking of a blood sample or other body fluids at a collection site approved by the commission. In these cases, the commission representative may prohibit the licensee from participating in racing until the licensee evidences a negative test result. Sufficient sample should be collected to ensure a quantity for a split sample when possible. A licensee who refuses to provide the samples herein described shall be in violation of these rules and shall be immediately suspended and subject to disciplinary action by the board or commission representative. All confirmed positive test costs and any related expenses shall be paid for by the licensee. Negative tests shall be at the expense of the commission.

With reasonable cause noted, an on-duty commission representative may direct a licensee to deliver a test. The commission representative shall call the approved laboratory or hospital and provide information regarding the person who will be coming; that the licensee will have a photo ID; the name and number to call when the licensee arrives; to whom and where to mail the results; and who should be called with the results. The licensee will be directed to immediately leave the work area and proceed to an approved laboratory or hospital for testing with the following directions:

1. If under impairment, the licensee must have another person drive the licensee to the laboratory or hospital.
2. On arrival at the laboratory or hospital, the licensee must show the license to the admitting personnel for verification.
3. On arrival at the laboratory or hospital, the licensee shall be required to sign a consent for the release of information of the results to a commission representative.

ITEM 9. Adopt the following new definition of “Alternative simulcast operator” in rule **491—8.1(99D)**:

“*Alternative simulcast operator*” or “*ASO*” means an entity licensed by the commission to provide a system of pari-mutuel wagering at off-track betting venues at facilities licensed by the commission to conduct gambling games in Iowa.

ITEM 10. Amend paragraph **8.6(1)“a”** as follows:

a. A licensee may request authorization from the commission to conduct advance deposit wagering pursuant to Iowa Code section 99D.11(6)“c” and ~~these rules this chapter~~. As part of the request, the licensee shall submit a detailed plan of how its advance deposit wagering system would operate. The commission may require changes in a proposed plan of operations as a condition of granting a request. No subsequent changes in the system’s operation may occur unless ordered by the commission or until approval is obtained from the commission after it receives a written request.

ITEM 11. Amend paragraph **8.6(2)“a”** as follows:

a. A person must have an established account in order to place advance deposit wagers. An account may be established in person at the licensee’s facility or with the ADWO by mail or electronic means. For establishing an account, the application must be signed or otherwise authorized in a manner acceptable to the commission and shall include the applicant’s full legal name, principal residence address, telephone number, and date of birth and any other information required by the commission. The licensee and ADWO shall have a process to verify that the player is not on the statewide self-exclusion list set forth in Iowa Code section ~~99F.4(22)~~ 99D.7(23) prior to establishing an account. The licensee and ADWO shall review and deactivate accounts of newly enrolled participants of the statewide self-exclusion program and comply with all other requirements set forth by the commission and in Iowa Code section ~~99F.4(22)~~ 99D.7(23).

ITEM 12. Amend subrule 8.6(3) as follows:

8.6(3) Operation of an account. The ADWO shall submit operating procedures with respect to licensee account holder accounts for commission approval. The submission shall include controls and reasonable methods that provide for the following:

a. ~~A written report to the commission for any incident where there is a violation of Iowa Code chapter 99D or 99F, a commission rule or order, or an internal control within 72 hours of detection. In addition to the written report, the ADWO shall provide immediate notification to the commission if an incident involves employee theft, criminal activity, or a violation of Iowa Code chapter 99D or 99F. Written notification to the commission consistent with 491—paragraph 5.4(5)“c.”~~

b. and c. No change.

d. ~~Treatment of problem gambling by:~~ Problem gambling controls consistent with 491—subrule 5.4(12).

~~(1) Identifying problem gamblers.~~

~~(2) Complying with the process established by the commission pursuant to Iowa Code section 99F.4(22) and 491—subrule 5.4(12).~~

~~(3) Cooperating with the Iowa gambling treatment program in creating and establishing controls.~~

~~(4) Including information on the availability of the gambling treatment program in a substantial number of the licensee’s advertisements and printed materials.~~

e. No change.

ITEM 13. Adopt the following new rule 491—8.7(99D):

491—8.7(99D) Alternative simulcast operator.

8.7(1) Authorization to conduct alternative simulcast.

a. An entity may request authorization from the commission to conduct alternative simulcast wagering pursuant to Iowa Code section 99D.9D and this chapter. As part of the request, the entity shall submit a detailed plan of how its wagering system would operate. The commission may require changes in a proposed plan of operations as a condition of granting a request. No subsequent changes in the system's operation may occur unless ordered by the commission or until approval is obtained from the commission after it receives a written request.

b. The commission may conduct investigations or inspections or request additional information from the entity as the commission deems appropriate in determining whether to allow an entity to conduct an alternative simulcast operation.

c. The entity shall establish and manage an alternative simulcast wagering center.

d. The commission may issue an ASO license that complies with the requirements of Iowa Code section 99D.9D and the additional criteria as established by the commission. The terms of any ASO license shall include but not be limited to:

- (1) Fees to be paid on any races subject to pari-mutuel wagering.
- (2) An annual license fee in an amount to be determined by the commission.
- (3) Completion of all necessary background investigations as determined by the commission.
- (4) Acceptance of wagers on live races conducted at the horse racetrack in Polk County.
- (5) A bond or irrevocable letter of credit on behalf of the alternative simulcast operator to be determined by the commission.

(6) Certification of secure retention of all records related to alternative simulcast and off-track wagering for a period of not less than three years or such longer period as specified by the commission.

(7) Utilization and communication of pari-mutuel wagers to a pari-mutuel system meeting all requirements for pari-mutuel systems employed by licensed racing facilities in Iowa.

e. Commission access to and use of information concerning alternative simulcast and off-track wager transactions shall be considered proprietary, and such information shall not be disclosed publicly except as may be required pursuant to statute or court order or except as part of the official record of any proceeding before the commission. This requirement shall not prevent the sharing of this information with other pari-mutuel regulatory authorities or law enforcement agencies for investigative purposes.

8.7(2) Operation of an ASO. The ASO shall submit operating procedures and controls that provide for the following:

a. Written notification to the commission consistent with 491—paragraph 5.4(5) “c.”

b. The segregation of incompatible functions so that no employee is in a position to perpetrate and conceal errors or irregularities in the normal course of the employee's duties.

c. User access controls for all sensitive and secure, physical and virtual, areas and systems within a wagering operation.

d. Problem gambling controls consistent with 491—subrule 5.4(12).

e. Setoff winnings of customers who have a valid lien established under Iowa Code chapter 99F.